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CF 1201

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

S.A. No. 250 /2004 Single Bench

APPELLANT PLAINTIFF : Rehmat Hussain s/o Late Dildar Hussain, age 68 years, Caste-Musalman, Occupation-Agriculture, r/o village Kanakpur, Post Chiniya, Tehsil Pal, District Surguja, C.G.

V E R S U S

RESPONDENTS DEFENDANTS :

1. Smt. Julekha d/o Mohammad Sadik, r/o village Anandpur, Distt. Surguja, C.G.

2. Smt. Sayda Khatun d/o Mohammad Sadik r/o village Baghmari, P.S. Ranka, District Gadhwa, Jharkhand.

3. Mohammad Dastgir s/o Mohammad Sadik, r/o village Vijaynagar, & Ramanujganj.

4. Mohammad Musa s/o Mohammad Sadik, r/o village Vijaynagar, Tehsil Pal, Distt. Surguja, C.G.

5. Jayda s/o Mohammad Sadik, r/o village Makhatu, P.S. Ranka, District Gadhwa, Jharkhand.

6. Mohammad Mushtak s/o Late Yakub. Vill- Kanakpur, P.O- Chiniya Tah- Pal Distt- Surguja (C.G)

7. The State of M.P. (Now C.G.) through Collector, Surguja, Ambikapur.

P. R. No. ..... Passed by ..... Presented by Shri Rajesh Tikyani dated 15.11.04

RECEIVED-COPY 15-11-04 Clerk to A. G. Bilaspur

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE.

APPEAL VALUED IN SUM OF RS. 400/- AS THE VALUATION OF THE CLAIM AS WELL AS COUNTER CLAIM OF THE DEFENDANTS. COURT FEES PAID RS. 120/- AS IN THE COURTS BELOW.

contd..2

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A.250/04 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	18.02.2005:-	

Shri A.K.Prasad, learned counsel for the appellant.

The instant second appeal has been preferred by the appellant/defendant (hereinafter referred to as 'defendant') against the impugned judgment and decree dated 31.03.2004 passed by learned Additional District Judge, Link Court, Ramanujganj in Civil Appeal No. 62-A/2002 arising out of judgement and decree dated 29.10.1999 passed by the Civil Judge, Class-I, Ramanujganj in Civil Suit No. 11-A/1996 has been confirmed.

Parties are hereinafter referred to as per description in the trial Court.

The respondent/plaintiff filed a suit for declaration that he is the owner of the suit property described in schedule 'A' and for further declaration that the order of mutation passed by Tehsildar, Ramanujganj dated 04.06.1996 was illegal and for perpetual injunction that the defendant be restrained from interfering with the possession of the respondent/plaintiff.

The case of the plaintiff was that the suit property described in schedule 'A' was the property of their ancestors Jaan Hussain which was inherited by the father of the plaintiff and defendant No. 1 and the same was partitioned between them in the year 1945-46 equally. However, the land continued to be recorded jointly in the revenue records and after the death of father of the plaintiff and defendants, it was jointly recorded in the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

name of the plaintiff and defendant No. 1. As there was no one to look after the suit land of the defendant No. 1 so after her marriage she transferred her share in the suit property for a consideration of Rs.1,000/- vide registered sale deed dated 30.12.1960 and since then, the plaintiff is in possession of the suit property and the suit property was mutated in the name of the plaintiff on 15.11.1961. Since then, he was in peaceful possession of the suit property. However, defendant No. 1 on the instigation of others, malafidely moved an application for getting her name recorded in the revenue records and the tehsildar without notice to the plaintiff vide order dated 04.06.1996 recorded the name of defendant No. 1 by deleting the name of plaintiff and therefore, the instant suit has been filed.

In reply, the averments of the plaint were denied and it is stated that there was no partition in the year 1945-46 between Dildar Hussain and Jaan Hussain as alleaged and she never executed the sale deed nor she received any consideration from the plaintiff. The mutation dated 15.11.1961 was done without notice to the defendant No. 1 and the sale deed was not registered on 30.12.1960 as alleged and the order of mutation passed on 04.06.1996 in her favour was legal. Defendant No. 1 preferred a counterclaim that she be declared owner of ½ share over the suit property and further for declaration that the sale deed be declared null and void.

On the basis of the pleading of the respective parties, issues were framed and the learned Civil Judge dismissed the suit of the defendants by recording a finding that the contention of plaintiff is that on account of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक और आदेश क्रमांक	हस्ताक्षर सहित आदेश – 3 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

execution of registered sale deed by defendant No. 1, the plaintiff is in possession since 30.12.1960 i.e. the date of purchase, till date and the mutation order dated 04.06.1996 passed by Tehsildar is illegal and that the plaintiff is the owner of the suit property, therefore he is entitled for perpetual injunction, were held to be not proved and learned trial Court also recorded a finding that the plaintiff has failed to prove that there was a partition between the father of the plaintiff and the father of defendant No. 1 in the year 1945-46. It was also held that the plaintiff and defendants were in joint possession of the suit property. Accordingly, the counterclaim of defendant No. 1 for partition was decreed and it was held that defendant No. 1 was entitled to ½ share over the suit property. The appeal preferred by the plaintiff was dismissed by the impugned judgment..

The concurrent finding of both the Courts below on appreciation of the evidence and material available on record, is based on the following reasoning;

That both the Courts below have concluded that there was no partition in the year 1945-46 as alleged by the plaintiff which is evident from the fact that the sale deed on Annexure P/11 depicts that except Khasra No. 180, other Khasra numbers have been shown to be sold by defendant No. 1 to plaintiff by showing ½ area of individual numbers. It clearly indicates that there was no partition as alleged in the year 1945-46 as even in the statement of the plaintiff, it is clear that there was no partition because he is not able to state as to which land went in the share of the respective parties.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

On the appreciation of the evidence of the plaintiff, learned Courts below have also reached the conclusion that defendant No. 1 was very young when her father died and she was brought up by the father of the plaintiff. The father of the plaintiff also arranged her marriage while she was young. The original sale deed has also not been produced by the plaintiff and the averments of the sale deed depicts that the sale deed was executed on 30.12.1960 whereas from the endorsement , in the back of the sale deed, it appear that the stamp papers for execution of the sale deed was purchased on 29.12.1960 and the deed was signed on 30.12.1960 and the same was received for registration on 01.03.1961. Even both the Courts below have recorded a discrepancy regarding the payment of consideration ~~whether~~ where the deed of Annexure P/11 shows that the consideration was paid mutually before execution of the ~~registry~~ deed, On the other hand, the plaintiff has stated that he paid the consideration before the office of Sub-registrar in the presence of the witnesses at the time of registration and on this ground, the payment of consideration was held to be suspicious. Even regarding the signature of the witnesses, Nabi Miyan has been scored out at one place on page No. 3 from which it has been concluded that the deed is shown to be executed before Nabi Miyan whereas the deed was registered before witnesses namely Azim Miyan. Even, both the Courts below recorded a concurrent finding on the basis of material discrepancy and contradictions present in the sale deed and statements of witnesses and thus, the execution of the sale deed of Annexure P/11 has been held to be untrustworthy and doubtful. Both the Courts below have recorded a finding that from the evidence of the witnesses and defendant No. 1, it is established that the price of the suit

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक और आदेश क्रमांक	हस्ताक्षर सहित आदेश — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

land was between Rs.10,000/- to Rs. 30,000/- as DW/2 Jageshwar Yadav has stated in his statement that he wanted to purchase 30 acres of land for a consideration of Rs. 10,000/- but she has refused to sell the same. However, he has not been able to state whether price of the land in dispute was Rs.30,000/- at the time of execution of the deed or not. On this basis, also the sale deed has been held to be doubtful.

From the evidence available on record it has also been recorded that the presence of defendant No. 1 on the date of registration is not established and on the basis of the above analysis of material available on record, both the Courts below have arrived at the conclusion that there was no partition between the father of the plaintiff and defendant as such the execution of the sale deed in favour of the plaintiff has been held to be doubtful. It has also been held by both the Courts below that the suit land was in the joint possession of both the parties as the plaintiff is the brother of defendant No. 1 who was looking after her share also over the suit land.

The concurrent finding of fact recorded by both the Courts below that there was no partition of the suit property between the plaintiff and defendant No. 1 and the execution of sale deed of Annexure P/11 is doubtful, is based on detailed and objective analysis of the statements of witnesses examined by the plaintiff and defendants and also on the documentary evidence available on record, therefore, it does not call for any interference. So far as the decree in favour of defendant No. 1 on her counterclaim is concerned, there is no dispute between the parties that the plaintiff and defendant No. 1 are entitled for ½ share each over the suit property when it is held that the finding of both the Courts below that there

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

was no partition of the suit property between the parties in the year 1945-46 as alleged and further when the sale deed of Annexure P/11 is held to be doubtful, then on the basis of the pleadings of both the parties and the material available on record, both the Courts below have not committed any illegality by decreeing the counterclaim of defendant No. 1 for partition and declaring her to be entitled for ½ share and separate possession, is also legal. Learned counsel for the plaintiff has not been able to show any ground to assail the concurrent finding of both the Courts below. There is no substantial question of law involved for adjudication of this appeal as proposed by the appellant in the memo of appeal and all the questions formulated by the appellant in the memo of appeal are question of fact, which have been decided by both the Courts below in their concurrent finding in favour of defendant and the proposed issue No. 1 by the plaintiff/appellant that the suit was barred by law of limitation as the same was filed after 35 years of deed of sale is of no consequence when it is held that the alleged sale deed has been held to be doubtful and it has also been held that the possession over the suit property was joint possession of the plaintiff and defendant No. 1. As a result, there is no merit in the instant second appeal and the appeal deserves to be dismissed and it is accordingly dismissed.

In the facts and circumstances of the case, there shall be no order as to costs.

With the aforesaid observations, M.C.P.No. 64/2004 and I.A.No. 1470/2004 stand disposed of.

Sd/-
Dhirendra Mishra
Judge